

BEFORE THE INVESTIGATIVE PANEL OF THE  
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING JUDGE  
HOWARD C. BERMAN, JQC NO.  
00-211

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CASE NO. SC00-2491

**MOTION TO COMPEL DEPOSITION TESTIMONY OF ROXANNE M. RAMOS  
AND TERESE L. PARKER AND MEMORANDUM OF LAW**

JUDGE HOWARD C. BERMAN, through undersigned counsel, moves for an Order compelling the witnesses, Terese L. Parker and Roxanne M. Ramos to testify at deposition in the above-captioned matter on the following grounds:

1. Terese L. Parker is a witness. Allegations relating to JUDGE BERMAN's alleged conduct in connection with Terese L. Parker are found in the Notice of Formal Charges, paragraphs 8 through 11.

2. Roxanne M. Ramos is a witness. Allegations relating to JUDGE BERMAN's alleged conduct in connection with Roxanne M. Ramos are found in the Notice of Formal Charges, paragraphs 12 through 20.

3. After coordination with counsel for the Florida Judicial Qualifications Commission (JQC), the deposition of Ms. Ramos was scheduled for April 24, 2001, beginning at 9:30 a.m. The deposition of Ms. Parker was scheduled for April 24, 2001 beginning at 1:30 p.m.

4. Ms. Ramos was served with a Subpoena for Deposition on April 17, 2001 at 3:20 p.m. Ms. Parker was served with a Subpoena for Deposition on April 19, 2001 at 4:40 p.m. (see Exhibits A and B).

5. On April 24, 2001, at approximately 9:30 a.m., Roxanne M. Ramos appeared with her attorney, Jack Scarola. Before the deposition, Mr. Scarola objected to the fact that JUDGE BERMAN was seated beside JUDGE BERMAN's counsel, Bettye King, at the table where the deposition was to be taken. He objected on the grounds that he did not want the witness to be able to see JUDGE BERMAN while the witness was testifying because while Ms. King would be conducting the examination, in order for Ms. Ramos to have eye contact with Ms. King, it would be necessary that she be confronting JUDGE BERMAN throughout the entire deposition (see transcript, Exhibit C, page 4). He indicated that this imposes an unnecessary additional emotional strain on her.

6. JUDGE BERMAN's counsel offered to have Ms. King and JUDGE BERMAN move farther down the table as long as they were able to sit next to each other (see transcript, Exhibit C, page 5). Mr. Scarola rejected this accommodation, insisting that JUDGE BERMAN must sit across the table from his attorney to be out of Ms. Ramos' line of sight while the attorney is asking questions (*id.* at page 5).

7. Mr. Scarola, who also represents Ms. Parker, then indicated that if the same accommodation he was requesting for Ms. Ramos would not be given in connection with Ms. Parker, then he would also cancel that deposition.

8. The witness was seated at the end of a conference table. Next to her was the court reporter. Next to the court reporter was Ms. King, JUDGE BERMAN's attorney, and next to Ms. King was JUDGE BERMAN. JUDGE BERMAN was approximately eight or nine feet from the seat reserved for Ms. Ramos (see transcript, Exhibit C, page 4). The seating arrangement was exactly the same as at prior depositions in this matter; no

allegations of any improper behavior or activity have been made with regard to these depositions.

9. After rejecting the proposal that Ms. King and JUDGE BERMAN move farther down the table farther away from Ms. Ramos, Mr. Scarola announced that he was terminating the deposition for the purposes of seeking a protective order (see transcript, Exhibit C, page 5).

10. Counsel for JUDGE BERMAN and counsel for the JQC have agreed to attempt to complete deposition discovery before the summer months begin so that conflicts with vacation schedules and the like not create scheduling difficulties for the completion of discovery. Because the depositions of these two witnesses are significant depositions and may lead to the addition of witnesses to JUDGE BERMAN's witness list, it is imperative that these depositions be concluded promptly. JUDGE BERMAN, as a party in this judicial proceeding, should be entitled to sit next to his attorney during the deposition to give and seek advice throughout the deposition.

11. No Motion for Protective Order or other relief was filed by counsel for either Ms. Ramos or Ms. Parker prior to the scheduling of the depositions. If accommodations were necessary for these witnesses, their counsel should have requested such accommodations prior to the deposition rather than waiting until the depositions when two attorneys and one investigator had traveled by air from Tampa to attend the depositions.

#### **MEMORANDUM OF LAW**

Even if a motion for protective order had been filed, Fla. R. Civ. P. 1.280(c) would not automatically stay the deposition. No motion for protective order was filed before the deposition. The witness in this case did not demonstrate by a timely motion that the subpoena served upon her was “unreasonable and oppressive” as required by Fla. R.Civ.P. 1.410(b) nor did she show by a motion for protective order that good cause was present to limit or prohibit the discovery sought due to “annoyance, embarrassment, oppression, or undue burden or expense” as required by Fla. R. Civ. P. 1.280(c). Counsel for the witness was not entitled to cancel the deposition because counsel for JUDGE BERMAN would not agree with regard to where JUDGE BERMAN should sit. See Don Mott Agency, Inc. v. Pullum, 352 So. 2d 107 (Fla. 2d DCA 1977)

It is appropriate to consult case law interpreting the Federal Rules similar to the Florida Rules of Civil Procedure. See Dominique v. Yellow Freight System, Inc., 642 So. 2d 594 (Fla. 4th DCA 1994). In Truxes v. Rolan Electric Corporation, 314 Supp. 752 (U.S.D.C. Puerto Rico), the Court considered a situation in which the witness had appeared for deposition, but after agreeing to a continuance, refused to appear for the continuance of his deposition. The Court stated that §30(b) of the Federal Rules of Civil Procedure makes it a duty of the party opposing the taking of his deposition to file a timely motion and show good cause for his non-appearance. Federal Courts have gone so far as to hold that the motion must not only be filed, but the Order must be entered granting the motion before a witness is excused from a Subpoena. See King v. Fidelity National Bank of Baton Rouge, 712 F. 2d 188 (5th Cir. 1983).

WHEREFORE, JUDGE BERMAN prays that the Court will enter an order directing that Ms. Ramos and Ms. Parker appear for deposition at a time agreed upon between JUDGE BERMAN's counsel and counsel for the JQC, but in no event later than May 23, 2001.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile to all persons on the Service List except Ms. Kennerly and Judge Jorgenson and by U.S. Mail to all persons on the attached Service List this \_\_\_\_ day of April, 2001.

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Before the Florida Judicial Qualifications Commission  
Supreme Court Case No. SC 002491  
Inquiry Concerning a  
Judge, No. 00-211

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